

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SKOKOMISH INDIAN TRIBE, a federally
recognized Indian tribe,

Plaintiff,

v.

PETER GOLDMARK, et al.,

Defendants.

No. 3:13-cv-05071- JLR

RENEWED MOTION TO FILE UNDER
SEAL REFERENCE TO CONFIDENTIAL
MATERIALS

NOTE ON MOTION CALENDAR:
NOVEMBER 1, 2013

I. INTRODUCTION

Amici curiae Hoh Tribe and Quileute Tribe (the “Hoh and Quileute”) respectfully renew their motion requesting that the Court (1) redact portions of the Skokomish Indian Tribe’s (the “Skokomish”) Response to the Hoh and Quileute’s Motion for Leave to Participate as *Amici Curiae* (Dkt. # 76); (2) redact portions of the Skokomish’s Response to the Hoh and Quileute’s Motion to Seal (Dkt. # 82); (3) maintain under seal the Hoh and Quileute’s Reply Regarding their Motion for Leave to Participate as *Amici Curiae* (Dkt. ## 78, 80); (4) maintain under seal the Hoh and Quileute’s Unredacted Reply Regarding their Motion to Seal (Dkt. ## 87, 88); and (5) maintain under seal this Unredacted Renewed Motion to File Under Seal Reference to Confidential Materials, along with its unredacted attachments.

These documents reference a confidential document which binds Skokomish, Quileute,

RENEWED MOTION TO FILE UNDER SEAL REFERENCE TO
CONFIDENTIAL MATERIALS - 1
Case No. 3:13-cv-05071-RBL

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 and Hoh to continuing duties of confidentiality, including a duty to keep the fact of the existence
2 of the document itself confidential. Hoh and Quileute file this Motion to Seal in order to
3 maintain their continuing obligations of confidentiality under the document.

4 II. ISSUE PRESENTED

5 Whether the Court should grant Hoh and Quileute's Motion to Seal because it represents
6 the least restrictive means to protect the confidential document while preserving the public's
7 interest in access to the court's files.

8 III. BACKGROUND

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 The Court denied Quileute and Hoh's Motion to Seal without prejudice, permitting
4 Quileute and Hoh to re-file their Motion after complying with the Western District of
5 Washington's Local Rules regarding motions to seal. (Dkt. # 90.)

6 All parties met and conferred via teleconference on October 10, 2013, but failed to reach
7 agreement. While Quileute and Hoh proposed simply redacting the pleadings rather than filing
8 them wholly under seal, Skokomish would not agree to any redaction, contending instead that the
9 document is not confidential. *See* attached Certification of Meet and Confer.

10 IV. ARGUMENT

11 In a non-dispositive motion like this one, Quileute and Hoh bear the burden of showing
12 good cause to overcome the presumption of public access to court files. Local Rules W.D. Wash.
13 CR 5(g)(2).

14 Courts of the Ninth Circuit have accepted private confidentiality agreements as sufficient
15 justification to seal documents in certain circumstances. *See Boucher v. First Am. Title Ins. Co.*,
16 No. C10-199RAJ, 2011 WL 5299497, at *5 (W.D. Wash. Nov. 4, 2011); *Pike v. Hester*, No.
17 3:12-cv-00283-RCJ-VPC, 2013 WL 3491222, at *7 (D. Nev. July 9, 2013) (granting the
18 plaintiff's request for permission to file documents under seal without leave if the documents are
19 governed by the parties' confidentiality agreement); *Mesa Bank v. Cincinnati Ins. Co.*, No. 09-
20 12-PHX-GMS, 2009 WL 247908, at *2 (D. Ariz. Feb. 3, 2009) (finding that private
21 confidentiality agreement constituted "good cause" to seal non-dispositive court filings). In
22 *Boucher*, the District Court for the Western District of Washington granted the plaintiffs' motion
23 to seal in compliance with the parties' confidentiality agreement. Because the sole redactions in
24 the plaintiffs' public pleadings pertained to items that were confidential under the agreement and
25 not directly relevant to the issues at hand in the litigation, the court found that plaintiffs showed
26 good cause to maintain the unredacted versions of the pleadings under seal. 2011 WL 5299497,

1 at *5 (noting that plaintiff “wishes to keep that . . . information private, and the court sees no
2 compelling need for disclosure here.”).

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 As mentioned above, this district and other courts within the Ninth Circuit have granted
19 motions to seal references to material covered by confidentiality agreements in recognition of the
20 potential chilling effect disclosure would have on parties’ willingness to enter into beneficial
21 confidentiality agreements. [REDACTED]
22 [REDACTED]

23 V. CONCLUSION

24 The Hoh Tribe and Quileute Tribe respectfully move the Court, pursuant to Local Rule
25 5(g)(3), to redact the following portions of certain pleadings and seal unredacted versions of the
26 pleadings:

RENEWED MOTION TO FILE UNDER SEAL REFERENCE TO
CONFIDENTIAL MATERIALS - 4
Case No. 3:13-cv-05071-RBL

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

- redact lines 5-9 on page 3 of the Skokomish's Response to Motion of Hoh and Quileute Tribes for Leave to Participate as *Amici Curiae* (Dkt. # 76);
- redact pages 1:19-20; 2:1, 4-5, 15-20; 3:1, 3, 15, 18-19 of the Skokomish's Response to the Hoh and Quileute's Motion to Seal (Dkt. # 82);
- maintain under seal the Hoh and Quileute's Unredacted Reply Regarding their Motion for Leave to Participate as *Amici Curiae* (Dkt. ## 78, 80);
- maintain under seal the Hoh and Quileute's Unredacted Reply Regarding their Motion to Seal (Dkt. ## 87, 88);
- maintain under seal this Unredacted Renewed Motion to File Under Seal Reference to Confidential Materials, as well as its unredacted attachments.

For the above reasons, the Hoh Tribe and Quileute Tribe request that the above-referenced documents be sealed.

Respectfully submitted this 22nd day of October, 2013.

DORSAY & EASTON LLP

By /s/ Craig J. Dorsay
 Craig J. Dorsay, WSBA #9245
/s/ Lea Ann Easton
 Lea Ann Easton, WSBA #38685
 1 S.W. Columbia Street, Suite 440
 Portland, OR 97258
 Telephone: (503) 790-9060
 Facsimile: (503) 790-9068
 Email: craig@dorsayindianlaw.com
LEaston@dorsayindianlaw.com
 Counsel for Hoh Tribe

FOSTER PEPPER PLLC

By /s/ Lauren J. King
 Lauren J. King, WSBA #40939
 Foster Pepper PLLC
 1111 Third Ave., Suite 3400
 Seattle, WA 98101
 Telephone: (206) 447-6286
 Facsimile: (206) 749-1925
 Email: kingl@foster.com
 Counsel for Quileute Tribe

QUILEUTE TRIBE

By /s/ Katherine Krueger
 Katherine Krueger, WSBA #25818
 P.O. Box 187
 La Push, WA 98350-0187
 Telephone: (360) 374-2265
 Facsimile: (360) 374-9250
 Email: katie.krueger@quileutenation.com
 Co-Counsel for Quileute Tribe

RENEWED MOTION TO FILE UNDER SEAL REFERENCE TO
 CONFIDENTIAL MATERIALS - 5
 Case No. 3:13-cv-05071-RBL

FOSTER PEPPER PLLC
 1111 THIRD AVENUE, SUITE 3400
 SEATTLE, WASHINGTON 98101-3299
 PHONE (206) 447-4400 FAX (206) 447-9700

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will notify all parties in this matter who are registered with the Court's CM/ECF filing system of such filing.

Respectfully submitted this 22nd day of October, 2013.

FOSTER PEPPER PLLC

By /s/ Lauren J. King

Lauren J. King, WSBA #40939

Foster Pepper PLLC

1111 Third Ave., Suite 3400

Seattle, WA 98101

Telephone: (206) 447-6286

Facsimile: (206) 749-1925

Email: kingl@foster.com

Counsel for Quileute Tribe

CERTIFICATE OF SERVICE
Case No. 3:13-cv-05071-RBL

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700